

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: FIRSTENERGY CORP. SECURITIES
LITIGATION

Case No. 2:20-cv-03785-ALM-KAJ

CLASS ACTION

Chief Judge Algenon L. Marbley

This Document Relates To:

Magistrate Judge Kimberly A. Jolson

ALL ACTIONS.

**MCNEES WALLACE & NURICK, LLC'S SUBMISSION PURSUANT TO
SHOW CAUSE ORDER DATED OCTOBER 4, 2022**

McNees Wallace & Nurick, LLC ("McNees") respectfully submits the following pursuant to the Court's Order dated October 4, 2022. (*See* ECF No. 349.)

IEU-Ohio received two subpoenas from Chuck Jones. The first subpoena was served in December 2021 in the now settled consolidated shareholder derivative cases. The second was served in May 2022 in these consolidated securities cases.

To respond to the subpoenas, IEU-Ohio engaged the Meyers Roman firm. There has been an ongoing effort to gather IEU-Ohio documents and share them with Meyers Roman for nearly ten months. Many documents have been shared over this time. On October 10, 2022, McNees confirmed with Meyers Roman that McNees had provided Meyers Roman all documents that they had requested related to this subpoena.

The search terms in dispute were first shared with McNees on August 11, 2022. It was not until October 11, 2022, that Meyers Roman asked McNees to run the search terms. In the

time between August 11 and October 11, the search terms, and the scope of the documents to be searched have been the subject of a meet and confer effort between Meyers Roman and Baker Hostetler. Other than a call on October 10, 2022, McNees has not been directly involved in the meet and confer effort between those two firms, however, McNees has consistently expressed to Meyers Roman a concern about the breadth of the search terms and the scope of the documents to be searched and the burden that would be imposed on McNees. For example, while McNees had not been requested to run the search terms currently in dispute, prior to October 11, 2022, McNees was requested to run another set of broad search terms. McNees complied and ran those broad search terms. McNees spent significant time over multiple days estimating how many of the emails were related to IEU-Ohio, McNees identified to Meyers Roman the significant amount of potentially responsive materials (many thousands of emails/attachments), and McNees did provide to Meyers Roman an estimate of the very significant burden and the time and cost McNees estimated would be associated with filtering the material identified in the very broad search terms down to IEU-Ohio related material.

In compliance with the request received on October 11, 2022, McNees has been working to pull the IEU-Ohio files to be searched. Considering that the request is for information from 2009 to present, there are many involved files to be identified, located, and extracted.¹

A search of document collections held by a law firm is extremely burdensome. McNees has a large energy practice. Initially, the scope of terms is extremely broad and does not appear to be tangentially related to the litigation at issue in this proceeding. For example, searching for variations of names of utility companies, will pull documents from engagements for many clients

¹ McNees is not certain it has materials in all categories covering thirteen years.

far beyond IEU-Ohio, and even the IEU-Ohio related material would cover nuances of utility ratemaking like rate class cost allocation and utility rate design unrelated to this litigation.

Moreover, the request has been made that the McNees firm run these search terms across the Outlook exchange accounts for four current or former partners or employees of the law firm. The Outlook exchange accounts requested to be searched are those of current partner Matthew Pritchard, current energy specialist Kevin Murray, former partner Samuel Randazzo, and former administrative assistant, Debby Ryan.² The work done by McNees attorneys, specialists, and administrative assistants is not limited to a single client, IEU-Ohio, and their Outlook exchange accounts are collections of information across hundreds of clients.

Obviously, McNees is not able to release other clients' information. The privilege, work product protection, and confidentiality are rights belonging to each client. Furthermore, much of McNees' work is on energy litigation before the Public Utility Commission Ohio and Federal Energy Regulatory Commission. Beyond client held privileges and rights, many of those matters also contain information subject to confidentiality agreements, and the settlement negotiations in those matters are subject to a settlement privilege.

Ohio Rule of Professional Conduct 1.6(a) specifically prohibits the disclosure of any information relating to the representation of a client without that client's specific informed consent. The Rule does not limit the application of the attorney client privilege to only substantive information regarding the representation but explicitly uses the terminology "relating to the representation" which would include the sought after "hit report" in the instant matter, since, such information could be used to extrapolate the duration, scope, timing and/or other

² McNees has Outlook exchange data for Messrs. Pritchard, Murray, and Randazzo. Ms. Ryan's Outlook was deleted after she left employment with the firm in 2019, consistent with firm practice.

protected information. (See Comment 4 to Ohio R. Prof'l Cond. Rule 1.6 – “This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person.)

However, what is more intrusive into the attorney/client protections governed by the Rules of Professional Conduct, is the instant request seeking disclosure of “hits” on McNees client documents that belong to clients other than IEU-Ohio. The effort to seek disclosure of ANY information related to clients other than IEU-Ohio from the McNees firm would result in an impermissible breach of the duty of client confidentiality which serves as the crux of the attorney/client relationship and which McNees is obligated to protect. To this end, the Ohio Supreme Court has affirmed a lawyers’ obligation to protect attorney client material during the discovery phase because the release of any privileged information “causes harm and prejudice that inherently cannot be meaningfully or effectively remedied” at later stages.³

McNees is a law firm. It represents thousands of clients every year and hundreds of clients every year in the energy space alone. Its professionals are bound by their professional obligations to protect client confidences. While McNees is willing to continue to gather and process IEU-Ohio materials as requested by IEU-Ohio, it must protect its other clients. This will require a sheet-by-sheet review of the materials to protect other clients’ information. Toward that goal, as soon as the request was made to run searches, McNees began the process of gathering files to be searched and engaged a discovery vendor to process those materials so they can be searched and reviewed.

³ *Blue Techs. Smart Sols., LLC v. Ohio Collaborative Learning Sols., Inc.*, 2022-Ohio-1935 at ¶ 20 (Ohio 9th App. Dist.) (quoting *Burnham v. Cleveland Clinic*, 151 Ohio St. 3d 356, 2016-Ohio-8000 at ¶ 2).

In the event the Court has questions or the need for further clarification, McNees will make itself available to the Court.

/s/ Karl H. Schneider

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Dated: October 21, 2022

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 21, 2022, a copy of the foregoing document was served on all parties of record via the Court's electronic filing system and on IEU-Ohio's counsel via email.

/s/ Karl H. Schneider

Karl H. Schneider (0012881)

McNees Wallace & Nurick, LLC